

<p>IN RE:</p> <p>OFFICE OF CONSUMER ADVOCATE,</p> <p>Complainant,</p> <p>v.</p> <p>AT&amp;T COMMUNICATIONS OF THE MIDWEST, INC.,</p> <p>Respondent.</p>	<p>DOCKET NO. FCU-02-15 (C-02-171)</p>
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(Issued September 16, 2002)

On July 15, 2002, the Consumer Advocate Division of the Department of Justice (Consumer Advocate) filed with the Utilities Board (Board) a request for formal complaint proceedings pursuant to 199 IAC 6.5, asking that the Board docket the proposed resolution issued in C-02-171, relating to AT&T Communications of the Midwest, Inc. (AT&T). On August 19, 2002, the Board issued an order reviewing the record assembled in the informal complaint proceedings and denying the request for formal complaint proceedings. The record showed that the customer, Ms. Amber Hutchinson, filed a written complaint with the Board on May 2, 2002, alleging her long distance service had been slammed. Board staff forwarded the complaint to AT&T, which responded on May 21, 2002, stating there was no slam because AT&T has a

recording of a third-party verification for the change in service. While not admitting liability, AT&T nonetheless credited the customer's account for the total bill amount and sent the customer a check in the amount of \$20 to reimburse the customer for the PIC change charges.

On May 24, 2002, Board staff forwarded a copy of the third-party verification to the customer, asking that the customer review the tape and respond in writing by June 4, 2002. No response was received, and on July 1, 2002, Board staff issued a proposed resolution finding that the customer had not disputed the verification and proposing no relief beyond what the local exchange carrier and AT&T had already provided.

The Board denied the request for formal proceedings, finding that the customer's failure to respond to Board staff regarding the validity of the verification indicates, at the very least, that the customer is satisfied with the resolution and does not wish to pursue this matter further. The Board acknowledged that there might be a slight possibility that there is more to this situation than meets the eye, but the Board found that it is at least as likely that further investigation would not result in any change in the proposed resolution. If the Board were to accept the mere possibility of discovering additional evidence as sufficient to establish reasonable grounds for formal investigation, then the requirements of § 476.3 would be rendered meaningless. That result should be avoided.

On August 22, 2002, Consumer Advocate filed a request for leave to amend and for reconsideration. Consumer Advocate proposes to amend its petition by

adding the argument that the customer's failure to respond to Board staff's inquiry of May 24, 2002, should not be a ground for refusing formal complaint proceedings. Consumer Advocate alleges that the customer disputes the validity of AT&T's third-party verification recording, claiming that the voice on the recording is not hers. Consumer Advocate states that it "knows of no evidence that would support a conclusion that the consumer does not wish the matter pursued." (Request at page 2.) Consumer Advocate also argues that this is the second case in which an Iowa consumer alleges that a claimed verification recording from AT&T is not the voice of the customer, citing Docket No. FCU-02-10. Finally, Consumer Advocate alleges that the customer has advised Consumer Advocate that she will testify in support of her allegations, if necessary.

On August 29, 2002, AT&T filed a response to the Consumer Advocate requests. AT&T says that Consumer Advocate is trying to characterize its own contact with the customer as "a lawful surrogate for the consumer actually pursuing her claim timely." (AT&T response at page 2.) AT&T argues that the customer's failure to respond in a timely manner means the customer has, as a matter of conduct and of law, accepted the proposed resolution. AT&T claims Consumer Advocate has no standing to continue its pursuit of a complaint that has been resolved.

On September 4, 2002, Consumer Advocate filed a reply to AT&T, arguing that the consumer in this case denied authorizing the change on three occasions: when the complaint was filed; in a verbal response to AT&T; and in an affidavit to Consumer Advocate. Consumer Advocate argues these three denials amount to reasonable grounds for formal investigation of this complaint.

The Board will grant Consumer Advocate's request for leave to amend the complaint but will deny the request for reconsideration. Consumer Advocate states that it "knows of no evidence that would support a conclusion that the consumer does not wish the matter pursued," but that statement ignores the undisputed fact that Board staff sent the verification recording to the customer on May 24, 2002, and the customer still has not taken any direct action to dispute the validity of the verification. This is not a situation where a customer has missed the response date by a few days, or even a couple of weeks; the customer has had the recording for over three months without responding to the Board or its staff. This is strong evidence that, at the very least, the customer is not interested in pursuing this matter further.

The customer's affidavit, attached to Consumer Advocate's request, does not alter the Board's analysis. In the affidavit, the customer states that the voice and the date of birth stated on the verification recording are not hers, but she does not indicate whether she knows who the voice belongs to or whether anyone else might have been authorized to change long distance service on her account. Thus, even taking the affidavit at face value, it is insufficient to establish that the verification recording is invalid. The recording could very well be the voice of another person who is authorized to make changes on the account.

In the end, the customer's failure to dispute the verification recording in a reasonably timely manner is conclusive as to this complaint. As the Board stated in its order denying request for formal complaint proceedings, it is almost always possible that a formal inquiry into any particular complaint might indicate further relief is appropriate, but that bare possibility does not suffice to meet the standard of

§ 476.3 that requires "reasonable ground for investigating the complaint." If it did, practically every informal complaint would become a formal one and the statutory standard would be meaningless.

**IT IS THEREFORE ORDERED:**

The "Request For Leave To Amend And For Reconsideration" filed on August 22, 2002, by the Consumer Advocate Division of the Department of Justice is granted with respect to the request for leave to amend but the request for reconsideration is denied.

**UTILITIES BOARD**

/s/ Diane Munns

/s/ Mark O. Lambert

ATTEST:

/s/ Judi K. Cooper  
Executive Secretary

/s/ Elliott Smith

Dated at Des Moines, Iowa, this 16<sup>th</sup> day of September, 2002.